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Attorney for NCO Financial Systems, Inc.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DEON L. THOMAS,
Plaintiff,

vs.

BLEIER & COX, LLP, NCO
FINANCIAL SYSTEMS, INC.,
CAPITAL ONE aka CAPITAL ONE,
NATIONAL ASSOCIATION,
CAPITAL ONE FINANCIAL CORP,
CAPIAL ONE BANK (USA) N.A.,

Defendants.

Case No. 2:11-CV-04428 AHM (OPx)

ANSWER OF NCO FINANCIAL
SYSTEMS, INC. TO SECOND
AMENDED COMPLAINT

Defendant, NCO Financial Systems, Inc. (hereinafter "NCO"), for itself
alone, responds to the Second Amended Complaint ("Complaint") filed by
Plaintiff, Deon L. Thomas ("Plaintiff"), as follows:

///

1 1. NCO admits that Plaintiff purports to seek redress for alleged
2 violations of the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. § 1692
3 *et seq.*, the Rosenthal Fair Debt Collection Practices Act (“Rosenthal Act”), Cal.
4 Civ. Code § 1788, *et seq.*, and the Fair Credit Reporting Act (“FCRA”), 15 U.S.C.
5 § 1681, *et seq.* as alleged at ¶ 1 of the Complaint, but NCO denies any and all
6 liability or wrongdoing. Except as expressly admitted, NCO denies the remaining
7 allegations contained in ¶ 1.
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11 2. NCO admits that Plaintiff purports to seek redress for alleged “actions
12 and inactions” of Defendants in connection with efforts to collect a debt from
13 Plaintiff as alleged at ¶ 2 of the Complaint, but NCO denies any and all liability or
14 wrongdoing. Except as expressly admitted, NCO denies the remaining allegations
15 contained in ¶ 2.
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18 3. NCO lacks sufficient information to answer the allegations contained
19 in ¶ 3 of the Complaint, and based thereon denies the same.
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21 4. NCO admits that Plaintiff purports to seek redress for alleged
22 violations of the FDCPA, Rosenthal Act, and FCRA as alleged at ¶ 4 of the
23 Complaint, but NCO denies any and all liability or wrongdoing. Except as
24 expressly admitted, NCO denies the remaining allegations contained in ¶ 4.
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27 5. NCO denies the allegations contained in ¶ 5 of the Complaint.
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1 12. NCO is unable to meaningfully respond to the phrase at ¶ 12 of the
2 Complaint.
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4 13. NCO admits that when it acts as a debt collector as defined by 15
5 U.S.C. § 1692a(6) its conduct may be governed by the applicable provisions of the
6 FDCPA. NCO further admits it engages in the business of debt collection and that
7 its principal business is debt collection related services. Except as expressly
8 admitted, NCO denies the remaining allegations contained in ¶ 13 of the
9 Complaint.
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12 14. NCO lacks sufficient information to answer the allegations contained
13 in ¶ 14 of the Complaint, which relate to a party other than NCO, and based
14 thereon denies the same.
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17 15. NCO lacks sufficient information to answer the allegations contained
18 in ¶ 15 of the Complaint, which relate to a party other than NCO, and based
19 thereon denies the same.
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21 16. NCO admits it engages in the business of debt collection and that its
22 principal business is debt collection related services. Except as expressly admitted,
23 NCO denies the remaining allegations contained in ¶ 16 of the Complaint.
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1 17. NCO lacks sufficient information to answer the allegations contained
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3 in ¶ 17 of the Complaint, which relate to a party other than NCO, and based
4 thereon denies the same.

5 18. NCO lacks sufficient information to answer the allegations contained
6
7 in ¶ 18 of the Complaint, and based thereon denies the same.

8 **STATEMENT OF FACTS**

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10 19. NCO lacks sufficient information to answer the allegations contained
11 in ¶ 19 of the Complaint, and based thereon denies the same.

12 20. NCO lacks sufficient information to answer the allegations contained
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14 in ¶ 20 of the Complaint, and based thereon denies the same.

15 21. NCO lacks sufficient information to answer the allegations contained
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17 in ¶ 21 of the Complaint, and based thereon denies the same.

18 22. NCO lacks sufficient information to answer the allegations contained
19
20 in ¶ 22 of the Complaint, and based thereon denies the same.

21 23. NCO lacks sufficient information to answer the allegations contained
22
23 in ¶ 23 of the Complaint, and based thereon denies the same.

24 24. NCO denies the allegations contained in ¶ 24 of the Complaint.

25 25. NCO admits Capital One Bank (USA), N.A. placed Plaintiff's account
26
27 ending in 4182 ("4182 Account") with NCO for collection on March 19, 2010.

1 NCO further admits account records reflect a letter was sent to Plaintiff on or about
2 November 2, 2010 relating to the account. NCO denies the November 2, 2010
3 letter was an initial notice. Except as expressly admitted, NCO denies the
4 remaining allegations contained in ¶ 25.
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7 26. NCO admits the allegations contained in ¶ 26.

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9 27. NCO admits its records relating to the 4182 Account reflect a letter
10 was sent to plaintiff on or about January 19, 2011 to inform him the account was
11 closed and NCO had not credit reported the account. NCO avers the original letter
12 is the best evidence of its content and denies the letter constituted continued
13 collection activity. Except as expressly admitted, NCO denies the remaining
14 allegations contained in ¶ 27.
15

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17 28. NCO lacks sufficient information to answer the allegations contained
18 in ¶ 28 of the Complaint, which relate to a party other than NCO, and based
19 thereon denies the same.
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21 29. NCO lacks sufficient information to answer the allegations contained
22 in ¶ 29 of the Complaint, which relate to a party other than NCO, and based
23 thereon denies the same.
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1 30. NCO lacks sufficient information to answer the allegations contained
2 in ¶ 30 of the Complaint, which relate to a party other than NCO, and based
3 thereon denies the same.
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5 31. NCO lacks sufficient information to answer the allegations contained
6 in ¶ 31 of the Complaint, which relate to a party other than NCO, and based
7 thereon denies the same.
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9 32. NCO lacks sufficient information to answer the allegations contained
10 in ¶ 32 of the Complaint, and based thereon denies the same.
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12 33. NCO lacks sufficient information to answer the allegations contained
13 in ¶ 33 of the Complaint, and based thereon denies the same.
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15 34. NCO lacks sufficient information to answer the allegations contained
16 in ¶ 34 of the Complaint, and based thereon denies the same.
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18 35. NCO lacks sufficient information to answer the allegations contained
19 in ¶ 35 of the Complaint, and based thereon denies the same.
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21 36. NCO lacks sufficient information to answer the allegations contained
22 in ¶ 36 of the Complaint, and based thereon denies the same.
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24 37. NCO lacks sufficient information to answer the allegations contained
25 in ¶ 37 of the Complaint, and based thereon denies the same.
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1 38. NCO lacks sufficient information to answer the allegations contained
2 in ¶ 38 of the Complaint, which relate to a party other than NCO, and based
3 thereon denies the same.
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5 39. NCO lacks sufficient information to answer the allegations contained
6 in ¶ 39 of the Complaint, which relate to a party other than NCO, and based
7 thereon denies the same.
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9 40. NCO lacks sufficient information to answer the allegations contained
10 in ¶ 40 of the Complaint, which relate to a party other than NCO, and based
11 thereon denies the same.
12

13 41. NCO denies the allegations contained in ¶ 41 of the Complaint.
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15 42. NCO admits that Plaintiff seeks redress for alleged violations of the
16 FDCPA, Rosenthal Act, and FCRA as alleged at ¶ 42 of the Complaint, but NCO
17 denies any and all liability or wrongdoing and denies Plaintiff is entitled to
18 damages from NCO in any amount whatsoever. Except as expressly admitted,
19 NCO denies the remaining allegations contained in ¶ 42.
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22 **Count I**

23 **VIOLATION OF THE FDCPA 15 U.S.C. § 1692**

24 **By Defendants Bleier and NCO**
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1 43. NCO incorporates its responses to paragraphs 1-42 as though fully set
2 forth herein.
3

4 44. NCO lacks sufficient information to answer the allegations contained
5 in ¶ 44, and based thereon denies the same.
6

7 45. NCO admits that when it acts as a debt collector as defined by 15
8 U.S.C. § 1692a(6) its conduct may be governed by the applicable provisions of the
9 FDCPA. NCO further admits it engages in the business of debt collection and that
10 its principal business is debt collection related services. Except as expressly
11 admitted, NCO denies the remaining allegations contained in ¶ 45 of the
12 Complaint.
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15 46. NCO denies the allegations contained in ¶ 46 of the Complaint and
16 denies Plaintiff is entitled to the requested relief.
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18 47. NCO denies the allegations contained in ¶ 47 of the Complaint and
19 denies Plaintiff is entitled to the requested relief.
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21 48. NCO denies the allegations contained in ¶ 48 of the Complaint and
22 denies Plaintiff is entitled to the requested relief.
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24 49. NCO denies the allegations contained in ¶ 49 of the Complaint and
25 denies Plaintiff is entitled to the requested relief.
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1 50. NCO denies the allegations contained in ¶ 50 of the Complaint and
2 denies Plaintiff is entitled to the requested relief.
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4 **Count II**

5 **VIOLATION OF THE ROSENTHAL CAL. CIVIL CODE § 1788 et seq.**
6

7 **By Defendants Bleier and NCO**

8 51. NCO incorporates its responses to paragraphs 1-50 as though fully set
9 forth herein.
10

11 52. NCO admits that when it acts as a debt collector as defined by Cal.
12 Civ. Code § 1788.2(c), its conduct may be governed by the applicable provisions
13 of the Rosenthal Act. NCO further admits it engages in the business of debt
14 collection and that its principal business is debt collection related services. Except
15 as expressly admitted, NCO denies the remaining allegations contained in ¶ 52 of
16 the Complaint.
17
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19 53. NCO admits that when it acts as a debt collector as defined by Cal.
20 Civ. Code § 1788.2(c), its conduct may be governed by the applicable provisions
21 of the Rosenthal Act. NCO further admits it engages in the business of debt
22 collection and that its principal business is debt collection related services. Except
23 as expressly admitted, NCO denies the remaining allegations contained in ¶ 53 of
24 the Complaint.
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1 54. NCO denies the allegations contained in ¶ 54 of the Complaint and
2 denies Plaintiff is entitled to the requested relief.
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4 55. NCO lacks sufficient information to answer the allegations contained
5 in ¶ 55 of the Complaint, which relate to a party other than NCO, and based
6 thereon denies the same.
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8 56. NCO denies the allegations contained in ¶ 56 of the Complaint and
9 denies Plaintiff is entitled to the requested relief.
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11 57. NCO denies the allegations contained in ¶ 57 of the Complaint and
12 denies Plaintiff is entitled to the requested relief.
13

14 **Count III**

15 **VIOLATION OF THE FRCA 15 U.S.C. § 1681 *et seq.* / § 623**

16 **WILLFUL NON-COMPLIANCE NEGLIGENT NON-COMPLIANCE**

17 **By Defendants Bleier and NCO**
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19 58. NCO incorporates its responses to paragraphs 1-57 as though fully set
20 forth herein.
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22 59. NCO lacks sufficient information to answer the allegations contained
23 in ¶ 59, and based thereon denies the same.
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1 60. NCO lacks sufficient information to answer the allegations contained
2 in ¶ 60 of the Complaint, which relate to a party other than NCO, and based
3 thereon denies the same.
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5 61. In response to ¶ 61 of the Complaint, NCO avers the cited statute
6 speaks for itself and refers all matters of law to the Court.
7

8 62. In response to ¶ 62 of the Complaint, NCO avers the cited statute
9 speaks for itself and refers all matters of law to the Court.
10

11 63. In response to ¶ 63 of the Complaint, NCO avers the cited statute
12 speaks for itself and refers all matters of law to the Court.
13

14 64. NCO admits the allegations contained in ¶ 64, except the allegation
15 that Plaintiff “never had . . . any accounts with” NCO. Capital One placed two
16 accounts in Plaintiff’s name with NCO for collection and thus NCO denies the
17 cited allegation.
18

19 65. In response to ¶ 65 of the Complaint, NCO avers that Capital One’s
20 placement of Plaintiff’s accounts with NCO for collection provided NCO with a
21 permissible purpose to obtain Plaintiff’s credit report. NCO refers all matters of
22 law to the Court.
23
24

25 66. In response to ¶ 66 of the Complaint, NCO avers the cited statute
26 speaks for itself and refers all matters of law to the Court.
27
28

1 67. In response to ¶ 67 of the Complaint, NCO avers the cited statute
2 speaks for itself and refers all matters of law to the Court. NCO further avers that
3 Capital One's placement of Plaintiff's accounts with NCO for collection provided
4 NCO with a permissible purpose to obtain Plaintiff's credit report.
5

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7 68. NCO denies the allegations contained in ¶ 68 of the Complaint.

8 69. NCO lacks sufficient information to answer the allegations contained
9 in ¶ 69 of the Complaint, which relate to a party other than NCO, and based
10 thereon denies the same.
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12 70. NCO denies the allegations contained in ¶ 70 of the Complaint.
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14 **Count VI**

15 **VIOLATION OF THE FRCA 15 U.S.C. § 1681 *et seq.* / § 623**

16 **WILLFUL NON-COMPLIANCE NEGLIGENT NON-COMPLIANCE**

17 **By Defendants Cap**

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19 71. NCO incorporates its responses to paragraphs 1-70 as though fully set
20 forth herein.
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22 72. NCO lacks sufficient information to answer the allegations contained
23 in ¶ 72, and based thereon denies the same.
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1 **SECOND AFFIRMATIVE DEFENSE**

2 As a second affirmative defense, NCO alleges, pursuant to 15 U.S.C. §
3
4 1692k(c), to the extent that a violation(s) is established, any such violation(s) was
5 not intentional and resulted from a bona fide error notwithstanding maintenance of
6
7 procedures reasonably adapted to avoid any such error.

8 **THIRD AFFIRMATIVE DEFENSE**

9 As a third affirmative defense, NCO alleges, pursuant to California Civil
10
11 Code § 1788.30(e), to the extent that a violation(s) is established, any such
12
13 violation(s) was not intentional and resulted from a bona fide error notwithstanding
14 maintenance of procedures reasonably adapted to avoid any such violation.

15 **FOURTH AFFIRMATIVE DEFENSE**

16 As a fourth affirmative defense, NCO alleges, Plaintiff consented to and/or
17
18 invited the conduct for which he seeks relief.

19 **FIFTH AFFIRMATIVE DEFENSE**

20 As a fifth affirmative defense, NCO alleges, Plaintiff knowingly and
21
22 voluntarily waived his rights to obtain any or all of the relief sought in the
23
24 complaint.

25 WHEREFORE, NCO respectfully requests that:

- 26 1. Plaintiff take nothing by way of his Complaint;
- 27
- 28

- 1 2. Judgment of dismissal be entered in favor of NCO;
- 2
- 3 3. NCO be awarded costs and attorney's fees it has incurred in defending
- 4 this lawsuit.
- 5
- 6 4. NCO be granted such other and further relief as the Court deems just
- 7 and proper.

8 Dated: 11/3/11

SESSIONS, FISHMAN, NATHAN & ISRAEL, L.L.P.

9 /s/ Debbie P. Kirkpatrick

10 Debbie P. Kirkpatrick

11 Attorney for Defendant

12 NCO Financial Systems, Inc.